

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CHARLES L. RYAN,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-391-C

In White v. Scibana, ___ F. Supp. 2d ___, No. 03-C-581-C, 2004 WL 877606 (W.D. Wis. Apr. 23, 2004), I concluded that the Bureau of Prisons was acting contrary to 18 U.S.C. 3624(b) by calculating petitioner Yancey White's good conduct time on the basis of the actual time he had served rather than his imposed sentence. I granted White's petition for a writ of habeas corpus under 28 U.S.C. § 2241 and ordered the warden to recalculate White's good conduct time in accordance with § 3624(b).

Like White, petitioner Charles L. Ryan is an inmate at the Federal Correctional Institution in Oxford, Wisconsin. His petition under § 2241 raises the same issue as that in White: he alleges that the bureau is calculating his good conduct time on the basis of time served rather than the sentence imposed. Petitioner has not paid the \$5 filing fee. Therefore, I construe his petition to include a request for leave to proceed in forma pauperis.

Petitioner has not supported his request for leave to proceed in forma pauperis with a trust fund account statement for the last six months. However, on June 16, 2004, petitioner filed a civil action in this court, Ryan v. Scibana, 04-C-364-C, in which he asked for leave to proceed in forma pauperis and supported the request with a trust fund account statement. Therefore, I have looked to that statement to determine whether petitioner qualifies for pauper status in this case. I conclude as I did in case no. 04-C-364-C that petitioner has the means to pay \$2.26 toward his filing fee.

Petitioner's trust fund account statement reveals that he has had deposits totaling \$67.75 to his prison account over the last six-month period, for an average monthly deposit of \$11.29. Calculating the amount of the \$5 fee that petitioner must pay by taking twenty percent of \$11.29, I find that petitioner can pay \$2.26 of the \$5 fee for filing his habeas corpus petition.

I note that on June 21, 2004, petitioner filed a motion in case no. 04-C-364-C, asking for permission to pay less than \$2.26 he was ordered to pay as an initial partial payment of the filing fee in that case. In support of his request, petitioner alleged that he has only \$1.34 in his prison account. However, I have denied that motion in a separate order entered today, because petitioner's trust fund account statement shows that he is receiving regular payroll deposits to his account. Therefore, petitioner has the "means" to pay the payment he has been ordered to make, even if he cannot do so as quickly as he would prefer.

Accordingly, IT IS ORDERED that petitioner's request for leave to proceed in forma

pauperis in this case is GRANTED, on the condition that petitioner pay \$2.26 of the \$5 fee for filing his petition. Because petitioner may have to wait for two or three weeks before he can accumulate \$2.26, he may have until July 23, 2004, in which to submit a check or money order made payable to the clerk of court in that amount. If, by July 23, 2004, petitioner fails to pay the partial fee in this case or show cause why he is unable to do so, then the clerk of court is directed to close this file for petitioner's failure to prosecute.

Entered this 22nd day of June, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge